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| 10/698,205      | 10/31/2003  | Frank Forrest Humbles |                     | 9994             |

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EXAMINER

MAYO, TARA L

ART UNIT PAPER NUMBER

3671

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/698,205

**Applicant(s)**

HUMBLES, FRANK FORREST

**Examiner**

Tara L. Mayo

**Art Unit**

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20031031</u> . | 6) <input type="checkbox"/> Other: ____  |

### **DETAILED ACTION**

1. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

2. The abstract of the disclosure is objected to because it refers to purported merits and speculative applications throughout. Correction is required. See MPEP § 608.01(b).

***Claim Objections***

3. Claim 1 is objected to because of the following informalities: a minor grammatical error.

In claim 1, section c, line 1, delete “positional” and insert therefor --positionable--.  
Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 7 through 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Vinci (U.S. Patent No. 5,549,121 A).

Vinci ‘121, as seen in Figures 1 through 7, shows an arm protection apparatus (2) for positioning at least one arm of patient comprising:  
with regard to claim 7,

(a) at least one central pad, said central pad sized to be positioned under the torso of a patient (col. 4, lines 39 through 43);

(b) attached on said central pad, at least one arm section with an arm end extending away from said central pad, said at least one arm section sized to loop around at least a portion of an arm (11) of a patient (10); and

(c) means for attaching (6 and 8) said arm end of said at least one arm section to said central pad, whereby at least a portion of an arm of a patient may be contained within said at least one arm section looped around an arm of a patient and held into place in proximity to a patient's torso;

with regard to claim 8,

wherein said central pad is sized whereby there is a plurality of arm sections;

with regard to claim 9,

wherein said plurality of arm sections are radiolucent (col. 5, lines 32 through 37);

with regard to claim 10,

wherein said means for attaching readily attach and detach (col. 4, lines 55 through 59)

whereby said plurality of arm sections may be quickly used to secure a patient's arm or to unsecure a patient's arm in proximity to a patient's torso; and

with regard to claim 11,

wherein said plurality of arm sections are constructed of material that is easily cut (col. 5, lines 19 through 23) whereby a portion of said plurality of arm sections may be cut away when necessary for visualizing a patient's arm folded within said arm section.

*Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 through 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vinci (U.S. Patent No. 5,549,121 A) in view of Tari (U.S. Patent No. 4,662,366).

Vinci '121, as seen in Figures 1 through 7, shows an arm protection apparatus (2) for positioning a patient's arms (11) when in a prone or supine position on a patient support comprising:

with regard to claim 1,

(a) at least one soft pad with a central portion positionable under the patient's body (col. 4, lines 39 through 43; and col. 5, lines 19 through 22);

(b) on said at least one soft pad, a right arm section positionable around the right arm of a patient including means for attaching (6 and 8) said right arm section to said central portion of said at least one soft pad so that said right arm section is folded around a patient's right arm; and

(c) on said at least one soft pad, a left arm section positionable around the left arm of a patient including means for attaching (6 and 8) said left arm section to said central portion of said at least one soft pad so that said left arm section is folded around a patient's left arm;

Art Unit: 3671

with regard to claim 2,

wherein said soft pad is made of material that is easily cut (col. 5, lines 19 through 23) whereby a portion of the soft pad may be cut away when necessary for visualizing a portion of a patient's body that may be otherwise covered by said at least one soft pad;

with regard to claim 3,

wherein said right and left means for attaching readily attach and detach (col. 4, lines 55 through 59) whereby said right and left arm sections may be easily and quickly attached and detached from said central portion of said at least one soft pad; and

with regard to claim 4,

wherein said at least one soft pad is radiolucent (col. 5, lines 32 through 37).

Vinci '121 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claim 1,

the right and left arm sections comprising upper and lower sections foldable around upper and lower parts of a patient's right and left arms;

with regard to claim 5,

the at least one soft pad comprising first and second rectangular sections connected together, thereby forming a generally H-shaped pad with the right arm upper section, left arm upper section, right arm lower section, and left arm lower section comprising legs of the H; and

with regard to claim 6,

Art Unit: 3671

wherein the H-shaped pad has a width approximately equal to the length of a patient's torso.

Tari '366, as seen in Figures 1 through 4, shows an arm support (10) for a patient's arms comprising separate upper and lower assemblies (30 and 32) positionable about the upper and lower sections (18 and 22) of an arm of a patient (14), the upper and lower assemblies configured to immobilize the entire arm of a patient (col. 3, lines 62 through 67), wherein each of the upper and lower sections includes means for attaching (45 and 46).

With regard to claim 1, it would have been obvious to one having ordinary skill in the art of supports at the time the invention was made to modify the device shown by Vinci '121 such that the right and left arm sections would each include upper and lower sections as taught by Tari '366. The motivation would have been to provide support for the entire right and left arms, respectively.

With regard to claims 5 and 6, a generally H-shaped pad having a width approximately equal to the length of a patient's torso is inherent to the device shown by Vinci '121 as modified above by Tari '366.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vinci (U.S. Patent No. 5,549,121 A).

Vinci '121 discloses all of the features of the claimed invention with the exception(s) of:



four arm sections attached to the central pad, each arm section sized to fit around approximately one-half of a patient's arm.

With regard to claim 12, it would have been obvious to one having ordinary skill in the art of supports at the time the invention was made to modify the device shown by Vinci '121 such that it would include four arm sections, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. With regard to the recitation that each arm section fits around approximately one-half of a patient's arm, the motivation would have been to support each arm of a patient equally with each arm section.

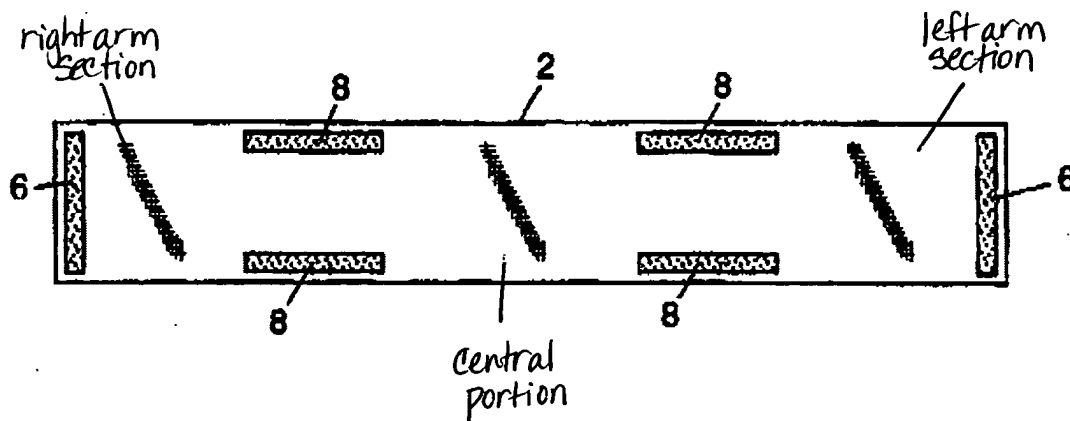
**U.S. Patent**

**Aug. 27, 1996**

**Sheet 3 of 5**

**5,549,121**

**FIG. 3**



*Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 703-305-3019. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
TLM

17 August 2004

  
ROBERT E. PEZZUTO  
PRIMARY EXAMINER